

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 56

Call to Order: By **CHAIRMAN JOHN ESP**, on March 25, 2003 at 3:12 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Sen. John Esp, Chairman (R)
Sen. Brent R. Cromley (D)
Rep. Arlene Becker (D)
Rep. Mark Noennig (R)

Members Excused: Sen. Emily Stonington (D)

Members Absent: None.

Staff Present: Marian Collins, Secretary
Susan Fox, Legislative Staffer

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the beginning of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: HB 56, 3/15/2003
Executive Action: Amend Further

{Tape: 1; Side: A; Approx. Time Counter: 0.1 - 1.2}

SEN. ESP presented a draft of an amendment written by Anita Roessmann, Montana Advocacy Program (MAP).

{Tape: 1; Side: A; Approx. Time Counter: 1.3 - 2.5}

REP. NOENNIG stated that this amendment is outside the scope of the Senate Amendment, and his recollection is that the scope of a Conference Committee is to decide whether to accept, reject or modify the language that's in an amendment.

Susan Fox, Legislative Staffer, stated that it is her understanding that amending the amendment is permissible. **REP. NOENNIG** asked where Ms. Roessmann came up with the language that she's proposing.

EXHIBIT (cch63hb0056a01)

{Tape: 1; Side: A; Approx. Time Counter: 2.7 - 4.3}

Ms. Roessmann stated that the language was arrived at through a conversation with an attorney in Massachusetts where they are redrafting the process by which people are admitted to their nursing homes. When she presented the language to Dan Anderson of the Department of Health and Human Services (DPHHS) he suggested using the words "progressive and degenerative." **REP. NOENNIG** asked if that language appears anywhere else in the Code, and whether or not this amendment covers everything that needs covering, and says everything that needs to be said.

{Tape: 1; Side: A; Approx. Time Counter: 4.4 - 4.9}

Dan Anderson, DPHHS, said that this language is okay. He talked with the medical director at the state hospital who said there weren't very many patients that he transfers to the nursing care center who would meet this definition.

{Tape: 1; Side: A; Approx. Time Counter: 5 - 8}

Paulette Kohman, Counsel for DPHHS, State Hospital and Nursing Care Center, stated that she showed this language to the medical director at the state hospital and the superintendent of the nursing care center. She asked them what would be included in "degenerative, neurological conditions" and they said it would include such conditions as Parkinson's and dementias. They stated that it doesn't cover the majority of the psychotic, schizophrenic patients who make up the majority of the transfers to the nursing care center.

Ms. Kohman stated that people who would benefit from a longer commitment would be people who are not going to change either to get better and be released, or get worse and be able to go to a less expensive nursing home. If someone has a neurological

condition like Parkinson's or Huntington's they're going to get to the point where they don't need to be in the state mental health nursing care center anymore but could be moved to a regular nursing home, and it is felt that those people ought to be reviewed on an annual basis. The people who weren't going to need the review were the people who were stable in their condition and needed longer commitments.

{Tape: 1; Side: A; Approx. Time Counter: 8.1 - 11.4}

SEN. ESP stated that the extension of the time for mental health nursing home patients in the amendment was his idea, and asked if the Committee would be better off without the amendment entirely and leave the bill as it was amended by the House. That language applies to extensions of all commitments.

Ms. Kohman stated that, until the nursing home center started getting patients that needed to be recommitted, they only dealt with old folks. The nursing care center would benefit by reducing the number of commitment hearings that they have to do, it would take less professional witnesses, less paperwork, less lawyers, etc. They would balance that against the need to continually review their patients to see who they can move out. They would like to identify and would benefit from selecting a group of people whose condition is not expected to change. If the nursing home center could identify the patients who were not expected to either improve or deteriorate, a longer period of commitment would be helpful.

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 14.5}

Ms. Roessmann stated that Montana law says that people have to go through due process if the state is going to lock them up for treatment. The mental health nursing care center has escaped detection by everyone because the folks there have reached the "end of the line." For some folks it's because they suffer from conditions so severe and progressively worsening that they can't advocate for themselves and there is nowhere else to go and it's an appropriate placement. Other people are there because the state hospital can't treat them anymore and the state couldn't find another placement for them, so the cheaper alternative is the nursing care center.

Ms. Roessmann stated that she was concerned that the language she proposed in Exhibit 1 might capture people who have severe chronic schizophrenia, for instance, who do keep getting worse. Evidence shows that Alzheimer's Disease and dementia starts to catch up with folks who've lived with severe mental illness all their lives, so that's going to become part of the equation. All of those people should be there because a judge has said that the requirements of the mental health commitment code have been met,

or that at least an attorney has reviewed the case and, if there's a waiver, it's made a requirement by the commitment code. She believes that this language needs to be narrowly written.

{Tape: 1; Side: A; Approx. Time Counter: 14.6 - 15}

REP. BECKER commented that the statement on Exhibit 1, "progressive, degenerative, severely disabling neurological disorder that will continue to deteriorate..." also can describe somebody with MS whose mind is perfectly functional and normal and has no psychosis or no mental illness.

{Tape: 1; Side: A; Approx. Time Counter: 15.3 - 19.2}

REP. THOMAS asked Ms. Roessmann if a patient is any less traumatized going through the court process than going through the hearing as it is written in the original bill. He also asked how the length of commitment is determined in the original bill.

Ms. Roessmann stated that the original bill passed out of Committee and to the House said that the civil commitment proceedings for people at the nursing care center will be identical to the commitment proceedings for people who are committed to the state hospital. The two-year commitment is in **SEN. ESP'S** floor amendment. The way this is written, because people at the mental health nursing care center are aged and unable to maintain themselves in their homes and communities they would be committed for up to a year at the first re-commitment, and up to two years at the second and all subsequent re-commitments under the statutes. Simply because they are patients at the nursing care center at the time of their re-commitment hearings they could be committed for a longer period of time which is inappropriate. These people deserve the right to due process and court review.

{Tape: 1; Side: A; Approx. Time Counter: 19.3 - 22}

SEN. ESP said, "The issue here is whether or not this Committee wants to continue to attempt to work on language which is probably not going to happen today." He asked if the Committee wanted to strip the Senate amendment and report the bill out of Committee as it came from the House. **REP. NOENNIG** stated that the amendment Senator Esp added only applied to those people who were committed to the mental health nursing care center. The way Ms. Roessmann has rewritten the bill it applies to everyone. The court cannot extend a commitment under the current bill/law, unless it finds that there is a comprehensive individual treatment plan. If there isn't, then that meets the concerns about due process, and something else will have to be done with that patient. The fact that these people are at this particular facility makes them different from the others.

{Tape: 1; Side: A; Approx. Time Counter: 22.1 - 23}

Ms. Fox stated that none of these amendments clarify which group of people are being addressed. She suggested this Committee not make the same mistake that was made two years ago on a bill which restricting liberty.

{Tape: 1; Side: A; Approx. Time Counter: 23.1 - 23.3}

SEN. ESP stated that the language we put in "because of" was an attempt to provide rational basis. If Ms. Fox doesn't think it provides that, then this whole discussion is moot.

{Tape: 1; Side: A; Approx. Time Counter: 23.3 - 23.7}

Motion/Vote: REP. NOENNIG moved to REJECT THE SENATE AMENDMENTS. Motion carried 6-0 by voice vote. SEN. STONINGTON voted "aye" by proxy.

{Tape: 1; Side: A; Approx. Time Counter: 23.7 - 24.9}

REP. BECKER asked **REP. NOENNIG** about his comment that the court is able to chose a length of time that someone will be committed. **REP. NOENNIG** stated that there is a provision on Page 4, subparagraph D, primarily line 9 describing the process.

SEN. ESP stated that this Committee has rejected the Committee of the Whole amendment and recommend such to the Senate.

Discussion ensued concerning how the length of commitment and re-commitment is determined.

ADJOURNMENT

Adjournment: 3:38 P.M.

SEN. JOHN ESP, Chairman

Marian Collins, Secretary

BT/MC

EXHIBIT (cch63hb0056aad)